

Subject

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THRU : Assistant Chief, Fiscal Division
Comptroller
Office of General Counsel

10 June 1952

Requests for Military Leave

OGC Has Reviewed

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1. Reference is made to your memorandum of 28 May 1952 with enclosures, on the subject of military leave and particularly to military leave for training purposes only, as set forth in Agency Regulation

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2. It might be well to start out by referring to the basic authority whereby members of the reserve of the various branches of the Armed Services, are granted military leave from the Government. With respect to the Naval Reserve, the following is set forth in 34 USC 853g:

"...That all officers and employees of the United States or of the District of Columbia who are members of the Naval Reserve shall be entitled to leave of absence from their respective duties without loss of pay, time, or efficiency rating, on all days during which they may be employed with or without pay under the orders or authorization of competent authority, on training duty (underlining supplied) for periods not to exceed fifteen days in any one calendar year...June 25, 1938, c. 690, Title I, § 9, 52 Stat. 1177, amended July 1, 1947, c. 192, § 3, 61 Stat. 239."

The Marine Corps and Coast Guard personnel are both included under the provisions of this section since both groups will be under the jurisdiction of the Navy where called to duty for training purposes.

3. With respect to the National Guard, it is provided at 32 USC 75:

"All officers and employees of the United States and of the District of Columbia who shall be members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating on all days during which they shall be engaged in field or coast-defense training (underlining supplied) ordered or authorized under the provisions of this title, for periods not to exceed fifteen days in any one calendar year...As amended July 1, 1947, c. 192, § 2, 61 Stat. 239."

4. It will be observed that the foregoing quotations specifically include the word "training". However, the language of the Army legislation, in effect with respect to military leave is somewhat different and is set forth as follows at 10 USC 371:

"All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps or the Enlisted Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at field exercises, or for instruction, (underlining supplied) for periods not to exceed fifteen days in one calendar year... May 12, 1917, c. 12, 40 Stat. 72, amended July 1, 1947, c. 192, § 1(a), 61 Stat. 230."

Research was performed with the possibility in mind that the words "with troops or at field exercises, or for instruction" might be held to include duty in addition to actual training duty. Information developed at an informal conference at the Office of the Judge Advocate General of the Army was to the effect that the language in question was considered to refer to training duty and report of the pertinent legislative history in their files showed that training duty was contemplated at the time of the passage of the act of May 12, 1917. Pertinent to this question is the Comptroller General's decision reported at 19 Comp. Gen. 513, wherein a member of the Officers' Reserve Corps was ordered to report for indefinite duty and to attend an officers' training camp. This was held not to constitute training duty and accordingly military leave was not granted. The decision contains the following pertinent language at page 515:

"The act of May 12, 1917, was intended to be, and is, limited in its application to the regular annual training periods of not to exceed 15 days in each calendar year to which officers of the Reserve Corps of the Army are authorized to be ordered without their consent, and has no application to extended or indefinite periods of active military duty with the Regular Army. The clear purpose and intent of the act of May 12, 1917, supra, was to maintain the status quo of civilian officers and employees of the Government— who are also members of the Officers' Reserve Corps of the Army—only during the training periods not exceeding 15 days each calendar year to which training they may be ordered without their consent, thus giving them the right to receive civilian compensation concurrently with military pay for such stated period."

5. From the foregoing, it is apparent that "duty with troops or at field exercises, or for instruction" is interpreted as duty for training purposes within the meaning of Agency Regulation [redacted]

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6. On inquiry at the Army Judge Advocate General's office and at the Air Force, advice was received that the Air Force by so called "Transfer Order" has adopted the Army's policy relative to annual training duty.

7. Returning to your memorandum, there was forwarded therewith a copy of a request for military leave from an employee who stated that he wanted the leave "for purposes of completing mandatory active duty requirements." You indicated that it was your belief that requests for military leave should actually state that the purpose of the request is to perform "training duty". You further set forth that another office of the Agency has advised that they would consider all requests for military leave not in excess of fifteen days to be for the purpose of training unless specifically indicated to the contrary. You raised the question as to whether or not this might be embarrassing in the event the duty referred to in a request for military leave actually was not training duty.

8. With respect to the specific language used by the employee referred to above, it should be pointed out that the fact that an employee in applying for military leave calls his prospective duty "training duty" does not necessarily make it so. Nor would the fact that he refrained from calling it training duty keep it from being training duty. It would appear, therefore, that in order to ascertain the nature of the duty it would be better to look to the individual orders. With respect to the specific case, the "mandatory active duty requirements" probably refers to training duty in the Officers' Reserve Corps, inasmuch as it is known that the Army, at this time, is making annual training duty practically mandatory.

9. A compelling argument in support of the Agency's protecting itself by ascertaining the nature of the duty to be performed prior to granting military leave, is based on the fact that members of reserve components of the various branches of the Armed Forces occasionally perform temporary periods of active duty other than training duty, in which case military leave may not be granted. In 19 Comp. Gen. 861, the situation involved a member of the Naval Reserve who was ordered to active duty for approximately two weeks for the purpose of attending a conference "on Naval Reserve matters." This was held not to be training duty and accordingly he was not entitled to military leave. Attention is invited to 28 Comp. Gen. 373 where a National Guard officer was ordered to attend a twenty week Air Intelligence Course. The question was whether the duty involved field or coast defense training, which would permit the first fifteen days of duty to be treated as military leave. It was held not to have been such training duty and accordingly the grant of military leave was not proper. In 30 Comp. Gen. 373, a civilian doctor was recalled to active duty with the Army for fifteen days in order to alleviate a shortage of medical officers in the Army Medical Department. This was held not to be training duty and accordingly military leave could not properly be granted. However, it was pointed out that the duty in question could be taken on annual leave, if available. From the decisions of the Comptroller General referred to, it may be seen that a policy whereby all requests for military leave up to fifteen days would be accepted as training duty unless specifically indicated to the contrary could, as you indicate, lead to an embarrassing situation.

10. It is the feeling of this office, therefore, that prior to the grant of military leave, the appropriate office of the Agency should take whatever precautionary measures are considered adequate to insure that the military leave granted an employee actually involves training duty. For practical purposes, in most cases a statement by the employee that the duty requested is for training purposes would be adequate inasmuch as the regulation on the subject is clear, and it is believed, therefore, that if there was any doubt in the mind of an employee he would make appropriate inquiry. This would, of course, be subject to check on receipt of the copies of orders required by Agency Regulation [redacted].

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